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4.4.6. Right to be heard and the personal interview

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icon for the right to be heard during the personal interview

The personal interview offers applicants for international protection the opportunity to tell their story of persecution to the asylum authorities and offers key information to case officers who decide on applications. The use of remote interviews in first instance procedures has gained ground in EU+ countries, a format which has remained after the lifting of COVID-19 measures. More rules for personal interviews were introduced, while national courts provided guidance on the procedure to hold an interview.

Following the judgment of 7 December 2020 by the Council of State to suspend the pilot project to have interviews by videoconference for applicants residing in open reception centres, preparations were done in 2021 to create a legal basis which would make remote interviewing possible again. The CGRS also granted refugee status without conducting a personal interview based solely on the basis of elements in the file. This concerned about 1,000 cases, mostly by applicants from Burundi, Eritrea and Syria with a very clear and obvious need for protection.551

In Greece, the Attica Directorate of the Asylum Service announced the start of remote asylum interviews as of April 2021 in Accommodation Structures under its jurisdiction (initially Malakasa, Inofyta and Ritsona), in close cooperation with the First Reception Service.552

Finland decided to continue using remote interviews, with the consent of the applicant, in reception centres and detention units, as they were found to be practical.553

In Ireland, the Refugee Council highlighted the shortcomings of remote interviews, including sound quality due to the software which was used. To remedy the situation, new software was introduced in December 2021.554

In the Netherlands, the Dutch Council of Refugees evaluated remote interviews and concluded that the experience has been positive overall, without any notable differences in the quality of in-person or video interviews. It was noted that remote interviews save money and travel time, but they are not suitable for vulnerable applicants dealing with trauma.555 To make the asylum procedure more flexible, since June 2021, the initial interview is combined with the application interview, where applicants are asked for a brief statement on the reasons for seeking asylum,

and minors can be interviewed separately where necessary.556

The change was criticised by the Dutch Council for Refugees as the asylum seeker does not receive legal assistance during the registration procedure and individualised information. The Dutch Council for Refugees considered that the general brochure was insufficient to cover the need for individualised information so that the applicant understands the impact of his/her statements related to the reasons for fleeing the country of origin.557 From another perspective, the Dutch Advisory Committee on Migration Affairs/Dutch Advisory Council Migration expressed reservations about asking about the reasons during the application interview as this introduces an inquiry into the application phase, without in-depth questions being asked.558

In Slovenia, amendments to the International Protection Act introduced the possibility to have remote interviews when necessary.559

Malta introduced a new case management rule to hold one interview where all necessary information is collected. Exceptionally, an additional interview can be organised with the written authorisation of the line manager. The notification for an interview is delivered by phone call, email or text message. For applicants who do not appear for their personal interview without justification, a stricter policy was introduced in 2021 to close the application as implicitly withdrawn.

The Belgian Constitutional Court clarified that 8 working days were sufficient for an applicant to provide comments to the CGRS on the notes of the personal interview. In addition, the applicant has the opportunity to submit observations up to the working day preceding the day on which the decision was taken.

In France, the National Court of Asylum held that missing the personal interview due to a postal malfunction was a legitimate reason to refer the case back to OFPRA. The court held that the applicant was deprived of the right to be heard, and since the responsibility lied with a third party, the Post Office, the court acknowledged the existence of a legitimate reason that justified the applicant's absence at the personal interview.

The Slovenian Supreme Court held that omitting the personal interview, either under the International Protection Act or the General Administrative Procedure Act, is not an absolute material breach of the procedure. The court noted that such an omission constitutes a relative material breach of the rules of the law and that it is necessary to determine whether it affected or was able to affect the lawfulness and correctness of the decision in the case.

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